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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,500

08/19/2003

James G. Chaussee

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT

PAPER NUMBER

1611

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/643,500	<b>Applicant(s)</b> CHAUSSEE ET AL.	
	<b>Examiner</b> Lakshmi S. Channavajjala	<b>Art Unit</b> 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-3 and 6-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt of amendment and response dated 1-30-08 is acknowledged.

Claims 4-5 and 25-26 have been canceled. Claims 1-3 and 6-24 are pending in the instant application.

In response to the amendment, the following rejection has been applied:

#### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-3 and 6-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,902,225 to Monson in view of EP 170 269 (EP) (both submitted on PTO-1449), and further in view of WO 93/17664 (WO).

Monson teaches (applicants admitted on page 1 of the instant specification) a post foamable skin or hair compositions composition comprising a concentrate and a diluent, of which the former reads on the instant "intermediate" (see examples).

Examples 1-9 reveal that the concentrate of Monson comprises surfactants such as decyl polyglucoside, triethanolamine, isobutene, isopentane (read on instant propellants), Carbopol (polymer), an emollient such as dimethicone copolyol (reads on the moisturizer of claim 1 and 17) and other additives. The diluent of the composition contains sodium bicarbonate and citric acid (examples). The ratio of citric acid to bicarbonate taught by Monson is within the range of instant claim 13.

Instant claim 1 recites 8% to 12% of diluent and claim 17 recites 4.6% to 7.4% of blend by the weight of the shaving cream. Instant claims 25 and 26 recite greater number of bubbles relative to a second composition prepared according to the Monsoon US patent No. 5,902,225. Instant claims 25 and 26 recite greater number of bubbles relative to a second composition prepared according to the Monsoon US patent No. 5,902,225. It has been explained in the previous section that instant claims are vague because instant claims are not clear as to which method of Monsoon is being referred to. However, instant claims only recite greater number of bubbles but fail to state as to greater in what magnitude- one more bubble or how many more bubbles.

Monson fails to teach the claimed ratios or the percentages of the blend capable of generating carbon dioxide, ratios of the propellants isopentane and isobutene or the claimed moisturizers. However, generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d454, 456, 105 USPQ 233, 235 (CCPA 1955). Accordingly, optimizing the percentages or ratios of the blend capable of generating carbon dioxide, and the ratios of the propellants isopentane and isobutene, to achieve a post-foaming composition with the appropriate amount of foam (number of bubbles) would have been readily evident to a skilled artisan at the time of the instant invention was made because Monsoon teaches

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all of the ingredients for a post foaming composition that has good spreadability and the ability to continuously produce greater foam.

With respect to the polymer blend claimed, Monson suggest several polymers for adjusting the viscosity of the composition (col. 7, L 35-44). All of the example compositions of Monson have Carbopol, one of the polymers claimed, as a thickener. While Monson does not teach the claimed mixture of three polymers, Monson suggests other thickeners such as hydroxyethylcellulose and guar gum, and a viscosity of 4000-8000 cps. Additionally, the examples of Monson have viscosity modifiers such as hexylene glycol. Thus, one of an ordinary skill in the art would have readily understood that the final viscosity of composition in the range of 4000-8000 cps may be achieved by a single or a combination of polymers and that the viscosity may be adjusted as desired by incorporating a viscosity modifier. Accordingly, in the absence of any unexpected advantage, one of an ordinary skill in the art would have employed one or more polymers for adjusting the viscosity of the composition at the desired level. Monsoon further teaches the composition as a post-foaming preparation that is present in a container, wherein the pressure of the composition when present in the composition is between 10-60 psig and includes the claim limitations of 15 and 16. Monson fails to teach the claimed lactic acid and specific moisturizers.

EP teaches skin or hair compositions in the form of shampoos, conditioners etc., similar to Monson. The composition of EP also comprises a substance capable of emitting carbon dioxide (foamable- see page 12, last line of EP), in addition to surfactants, vitamin E acetate (reads on claimed moisturizers of claims 2 & 19), lactic

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acid, lactate, etc (see examples 9, 11, 12 etc), the entire composition being present in a container. EP teaches addition of organic acids such as citric acids, lactic acids as pH modifiers to the final composition (pages 8 & 9). Thus both Monson and EP are directed to foamable compositions and accordingly it is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be Used for the very same purpose. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to include lactic acid and vitamin E acetate of EP in the post-foaming composition of Monson because EP suggests that the acids such as lactic acid provide buffering activity and both the references desire the presence of components such as emollients, skin treatment or conditioning agents such as glycerin, humectants, antibacterial agents, vitamins etc.

WO teaches combinations of at least one cellulosic polymer and at least one carboxy vinyl polymer for increased viscosity of compositions. On page 2, WO states that certain combinations of polymers yield higher viscosity than when the polymers are used alone and that the higher viscosity may be achieved with much lower concentration of the polymers when used alone. WO states that the combination of polymers result in a longer moisturizing effect. The preferred polymers of WO are listed on page and include all of the claimed polymers.

Thus, it would have been obvious for a skilled artisan at the time of the instant invention that employing a combination of polymers to achieve a desired viscosity of a formulation is advantageous than using a single polymer because the combination employs much

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lower amounts of the individual polymers than a single polymer and also provides long lasting moisturizing effect. It would have been obvious for a skilled artisan at the time of the instant invention was made to choose an appropriate combination of polymers in the composition of Monson containing lactic acid and vitamin E of EP with an expectation to achieve the desired viscosity of the composition with an amount lower than when Carbopol (taught by Monson) was used alone.

### ***Response to Arguments***

Applicant's arguments filed 1-30-08 have been fully considered but they are not persuasive.

Applicants argue that Monson fails to teach the claimed combination of polymer and that the polymer Carbopol taught by Monson is in the range of 1.5% to 1.75%, which is different from the claimed 0.8% to 1.1% for the entire blend. It is argued that Monson generically teaches thickening agents. However, as explained in the rejection, Monson teaches that a viscosity between 4000-8000 cps is desirable and suggests polymers such as Carbopol, hydroxy ethylcellulose and guar gums as suitable polymers. With respect to the unexpected results of instant figures 1-16, it is not clear from the instant disclosure as well as applicants' arguments as to which of the examples of Monson have been employed to compare with the instant example composition and if the differences observed in terms of the bubble sizes and the number is due to polymer blend alone. It is suggested that a description of the composition (of Monson) that has been used for comparing with the instant composition would help interpret the results

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and determine if the instant compositions leads to unexpected results. Applicants argue that Monson desired airy and lacy bubbles as an improvement over the prior art and that one skilled in the art would not employ thickeners to achieve such a result.

However, all of the examples of Monson contain Carbopol thickener. Further, with respect to the argument regarding the amounts of the polymer, the new combination of references shows that a blend of polymers requires lower amount of polymers than when a polymer is used alone.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lakshmi S Channavajjala/  
Primary Examiner,  
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April 27, 2008